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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,379	02/13/2007	Raymond John Bacon	508-051,009	2557

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EXAMINER

SHEARER, DANIEL R

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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06/22/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/580,379

Applicant(s)

BACON, RAYMOND JOHN

Examiner

DANIEL R. SHEARER

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-11,13,14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-11,13,14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No.(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/11/2011 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tapered slug as discussed in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 18 is objected to because of the following informalities: line 10 recites "flows away said" and the word "from" should be inserted between "away" and "said". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11, 13, 14 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 18 includes a limitation to "a glass annulus" and is unclear if the glass annulus is an actual object or if it is merely the space between the slug and the reservoir.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1, 3, 6-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,001,524 to Maison et al. (Maison) in view of U.S. Patent No. 4,085,616 to Patel et al. (Patel).

Maison shows dispenser (Fig. 8) with a release valve (Fig. 11) and a reservoir (10) for a source of a gaseous, gas borne or droplet substance (Col. 8, ll. 8-20). The reservoir (10) is transparent (Col. 7, ll. 75, Col. 8, ll. 1-2) so that a user can note the quantity of substance remaining in the reservoir. During use in the valve-down position (Fig. 9, Col. 7, ll. 25-28) the medicament flows away from the bottom of the reservoir and a user inverting the dispenser so it is valve up (Fig. 1) can observe the level of the substance in the bottom portion. Maison fails to disclose a minor portion in the form of a tapered tip having a comparatively small cross section.

Patel shows a reservoir (Fig. 1), comprising a minor portion (106) and a major (104) portion with the minor portion having a smaller relative cross section (Fig. 1) and the reservoir being a transparent plastic material (Col. 4, ll. 42-43). The minor portion is opposite the discharge outlet (34) and the minor portion is in the form of a tapered tip to allow for more accurate measurement of the fluid when a small volume of fluid is in the container (Col. 4, ll. 44-52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have implemented the Patel teaching of a tapered bottom

reservoir with the Maison reservoir to allow for more accurate measurement of the fluid when a small volume of fluid is in the container. In the discharge outlet up position, a user can observe the level of substance in the minor portion (Fig. 1).

Regarding claim 3, Patel shows that the minor portion has a progressively diminishing cross section (Fig. 1).

Regarding claim 6-8, Maison discloses that the reservoir is a glass reservoir enclosed in an insert molded plastics material sheath (Col. 8, ll. 2-6).

Regarding claim 9, Maison discloses that the reservoir is of transparent/translucent plastics material (Col. 7, ll. 75, Col. 8, ll. 1-5).

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maison in view of Patel as applied to claim 9 above and further in view of U.S. Patent No. 3,506,004 to Mann et al. (Mann).

The Maison-Patel combination shows all aspects of the applicant's invention as set forth in claim 9, but fails to disclose the reservoir enclosed by a robust, impermeable outer enclosure. However, Mann shows a reservoir (20) enclosed in a robust, impermeable enclosure (21) to keep the reservoir free from dust and other contaminants (Col. 3, ll. 20-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the reservoir of Maison as modified by Patel with the enclosure of Mann to keep the reservoir isolated from dust and other contaminants.

Allowable Subject Matter

9. Claims 11, 13, 14 and 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
10. Applicant's arguments with respect to claims 1, 3, 6-10 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./
Examiner, Art Unit 3754

/KEVIN P. SHAVER/
Supervisory Patent Examiner, Art
Unit 3754